Pakas Rao a/l Applanaidoo (as public officer of The Malaysian Indian Congress (MIC) pursuant to s 9(c) of the Societies Act 1966) & Ors v Pendaftar Pertubuhan Malaysia & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-194–06 OF 2015
AZIAH ALI, UMI KALTHUM AND VERNON ONG JJCA
13 JULY 2015

Unincorporated Associations — Societies — s 16(1) — Election — Irregularities — Re-election — Call for withdrawal of elections — Powers under s 16(1) of the Societies Act 1966 — Whether first respondent acted within power bestowed upon him

By a letter dated 5 December 2014 ('the first letter') addressed to the first appellant in his capacity as the Secretary-General of the Malaysian Indian Congress ('MIC') the first respondent informed that investigations were carried out following complaints from MIC members of irregularities in an election. The first respondent found that there were irregularities and requested MIC's cooperation to carry out re-elections of the affected branches, divisions, central working committee ('CWC') and Vice-Presidents posts within stipulated time frames. By a letter dated 24 December 2013, the first appellant provided certain clarification to the first letter and requested for a response and the withdrawal of the call for re-elections from the first respondent. In its reply dated 31 December 2014 ('the second letter'), the first respondent gave notice under s 16(1) of the Societies Act 1966 ('the Act') to the effect that the MIC was required to resolve the dispute within the stipulated time frames. The first respondent requested MIC's cooperation to carry out re-elections of the affected branches, divisions, CWC and Vice-Presidents posts within stipulated time frames. By a letter dated 6 January 2015 ('the third letter'), the first respondent stated that the second letter was a notice issued under s 16(1) of the Act; at the same time, the first respondent accepted that the first letter was not a s 16(1) notice. The second appellant wrote to the first respondent with proposals for an amicable settlement of the disputes. The President of the MIC proposed to hold fresh elections for all posts in MIC and suggested that the CWC elected and appointed in the 30 November 2013 elections would conduct the elections. Accordingly, the first respondent was requested to extend the time frames for the holding of the fresh elections and to withdraw the s 16(1) notice vide the second letter and first letter. Consequently, the first respondent took the position that the entire elections and General Assembly held in 2013 to be null and void. The first respondent then, in exercise of the powers given to him under s 3A of the Act, asked the MIC to take new

measures in order to regularise the affairs of the MIC. Among the measures included the holding of re-elections for all posts to be held on a staggered basis from April to July 2015. The appellants argued that the first respondent exceeded his authority when he gave the directions to the MIC to hold re-elections and for the 2009 CWC to be the interim committee in purported exercise of his powers under s 3A of the Act ('the directions'). It was further argued that since s 16(1) is a specific provision relating to disputes, the first respondent exceeded his authority by relying on s 3A to give the directions. The power of the first respondent under s 16(1) was limited to the cancellation of the registration of the society under s 13. As such, s 16(1) should be interpreted narrowly so as to limit the scope of duty of the first respondent. On the other hand, s 3A is a general provision in the Act which does not give any power to the first respondent to give the directions. The High Court dismissed the appellants' judicial review application to quash the first and second respondents' decisions, directives and/or orders as contained in the letters dated 5 December 2014, 31 December 2014 and 6 February 2015. Hence, the present appeal. The issue that arose in the present appeal was whether the first respondent has acted beyond his powers under s 16(1) by giving directions under s 3A of the Act.

Held, dismissing the appeal with costs of RM30,000:

(1) The maxim *generalibus specialia derogant* is a legal principle which implies that the special provision is one that derogates from the general provision and the special provision must be interpreted strictly in the case; and that a general provision cannot remove a special provision. Section 3A of the Act is not a general provision. Section 3A is a charging section in that it gives additional powers to the first respondent for the purposes of giving effect to and carrying out the provisions of the Act. The opening words of s 3A 'In addition to the powers, duties and functions conferred on the Registrar by this Act ...' clearly construed must be interpreted to mean that the powers conferred under s 3A are in addition to that under s 16 of the Act (see paras 21 & 25).

(2) As s 3A does not contain any express qualification (as in s 57 of the LPA) or overriding provision (as in s 41B(2) of the DDA), s 3A is a provision that clearly confers additional powers on the first respondent exercisable for the purposes of the Act. It was therefore permissible for the first respondent to exercise such powers for the purposes of the Act as conferred under s 3A. The first respondent had not acted beyond or in excess of his powers under s 16 of the Act by giving directions under s 3A of the Act (see para 30).

[Bahasa Malaysia summary

Melalui surat bertarikh 5 Disember 2014 ('surat pertama') yang dialamatkan kepada perayu pertama dalam kapasitinya sebagai Setiausaha Agung Kongres India Malaysia ('MIC') responden pertama dimaklumkan bahawa siasatan yang dijalankan rentetan aduan daripada ahli-ahli MIC tentang ketidakteraturan dalam satu pemilihan. Responden pertama mendapati bahawa terdapat ketidakteraturan dan memohon kerjasama MIC untuk menjalankan pemilihan semula cawangan, kawasan, Jawatankuasa Kerja Pusat ('JKP') dan jawatan-jawatan Timbalan Presiden yang terlibat dalam jangka masa yang ditetapkan. Melalui surat bertarikh 24 Disember 2013, perayu pertama telah mengemukakan penjelasan tertentu terhadap surat pertama itu dan meminta maklum balas dan penarikan balik untuk panggilan pemilihan semula daripada responden pertama. Dalam jawapannya bertarikh 31 Disember 2014 ('surat kedua'), responden pertama telah memberi notis di bawah s 16(1) Akta Pertubuhan 1966 ('Akta tersebut') yang memberi kesan bahawa MIC dikehendaki menyelesaikan pertikaian itu dalam tempoh masa yang ditetapkan. Responden pertama meminta kerjasama MIC untuk menjalankan pemilihan semula di cawangan, kawasan JKP dan jawatan-jawatan Timbalan Presiden yang terlibat dalam tempoh masa yang ditetapkan. Melalui surat bertarikh 6 January 2015 ('surat ketiga'), responden ketiga menyatakan bahawa surat kedua itu adalah notis yang dikeluarkan di bawah s 16(1) Akta tersebut; pada masa sama, responden pertama menerima bahawa surat pertama itu bukan notis s 16(1). Perayu kedua menulis kepada responden pertama dengan cadangan untuk penyelesaian pertikaian itu secara baik. Presiden MIC bercadang untuk mengadakan pemilihan baru untuk semua jawatan dalam MIC dan mencadangkan agar JKP yang dipilih dan dilantik dalam pemilihan 30 November 2013 akan menjalankan pemilihan-pemilihan itu. Oleh demikian, responden pertama telah memohon lanjutan tempoh masa untuk mengadakan pemilihan baru dan untuk menarik balik notis s 16(1) melalui surat kedua dan surat pertama. Berikutan itu, responden pertama telah membuat pendirian bahawa keseluruhan pemilihan dan Perhimpunan Agung yang telah diadakan pada 2013 adalah terbatal dan tidak sah. Responden pertama kemudian, dalam melaksanakan kuasa yang diberikan kepadanya di bawah s 3A Akta tersebut, memohon MIC untuk mengambil langkah-langkah baru bagi tujuan menyelaraskan hal ehwal MIC. Antara langkah-langkah itu termasuklah mengadakan pemilihan semula untuk semua jawatan yang akan diadakan secara berperingkat dari April hingga Julai 2015. Perayu-perayu berhujah bahawa responden pertama telah melampaui kuasanya apabila dia memberi arahan kepada MIC untuk mengadakan pemilihan semula dan untuk JKP 2009 dijadikan jawatankuasa sementara bagi tujuan melaksanakan kuasanya di bawah s 3A Akta tersebut ('arahan-arahan tersebut'). Ia dihujahkan selanjutnya bahawa oleh kerana s 16(1) adalah peruntukan spesifik berkaitan pertikaian, responden pertama telah melampaui kuasanya dengan bergantung kepada s 3A untuk memberi arahan-arahan

tersebut. Kuasa responden pertama di bawah s 16(1) adalah terhad setakat pembatalan pendaftaran persatuan di bawah s 13. Oleh itu, s 16(1) patut ditafsirkan secara sempit untuk mengehadkan skop kewajipan responden pertama. Sebaliknya, s 3A adalah peruntukan am dalam Akta tersebut yang tidak memberi apa-apa kuasa kepada responden pertama untuk memberi arahan-arahan tersebut. Mahkamah Tinggi menolak permohonan semakan kehakiman perayu-perayu untuk membatalkan keputusan, arahan dan/atau perintah responden-responden pertama dan kedua sepertimana yang terkandung dalam surat-surat bertarikh 5 Disember 2014, 31 Disember 2014 dan 6 Februari 2015. Justeru, rayuan ini. Isu yang timbul dalam rayuan ini adalah sama ada responden pertama telah bertindak melampaui kuasanya di bawah s 16(1) dengan memberikan arahan-arahan tersebut di bawah s 3A Akta tersebut.

Diputuskan, menolak rayuan dengan kos sebanyak RM30,000:

(1) Maxim *generalibus specialia derogant* adalah prinsip undang-undang yang menyatakan bahawa suatu peruntukan khas adalah suatu yang dikurangkan daripada peruntukan am dan peruntukan khas perlu ditafsirkan dengan ketat dalam kes itu; dan bahawa peruntukan am tidak boleh membatalkan peruntukan khas. Seksyen 3A Akta tersebut bukan peruntukan am. Seksyen 3A adalah seksyen pertuduhan yang mana ia memberikan kuasa tambahan kepada responden pertama untuk tujuan memberi kesan kepada dan menjalankan peruntukan-peruntukan Akta tersebut. Pembuka kata s 3A *'In addition to the powers, duties and functions conferred on the Registrar by this Act ...'* dengan jelas ditafsirkan agar membawa maksud bahawa kuasa-kuasa yang diberikan di bawah s 3A adalah tambahan kepada kuasa di bawah s 16 Akta tersebut (lihat perenggan 21 & 25).

(2) Oleh kerana s 3A tidak mengandungi apa-apa kelayakan nyata (seperti dalam s 57 Akta Profesyen Undang-Undang 1976) atau peruntukan utama (seperti dalam s 41B(2) Akta Dadah Berbahaya 1952), s 3A adalah peruntukan yang jelas memberikan kuasa tambahan kepada responden pertama yang boleh dilaksanakan bagi tujuan Akta tersebut. Oleh itu responden pertama boleh dibenarkan melaksanakan kuasa-kuasa tersebut bagi tujuan Akta tersebut sepertimana diberikan di bawah s 3A. Responden pertama tidak bertindak melampaui atau melebihi kuasa-kuasanya di bawah s 16 Akta tersebut dengan memberikan arahan-arahan tersebut di bawah s 3A Akta tersebut (lihat perenggan 30).]]]]]

Notes

For cases on societies in general, see 12(2) *Mallal's Digest* (5th Ed, 2015) paras 3514–3625.

Cases referred to

DP Vijandran v Majlis Peguam [1995] 3 MLJ 576; [1996] 1 CLJ 23, CA (distd)

Pendaftar Pertubuhan v Datuk Justin Jinggut [2013] 3 MLJ 16; [2013] 2 CLJ 362, FC (distd)

Public Prosecutor v Chew Siew Luan [1982] 2 MLJ 119, FC (refd)

Legislation referred to

Criminal Procedure Code s 388(1)

Dangerous Drugs Act 1952 ss 41B(1), (2)

Legal Profession Act 1976 ss 29, 30, 32, 31, 32, 33, 33(1)(h), (2) 34, 56, 57, 57(c)

Penal Code s 193

Societies Act 1966 ss 3A, 7, 13(1)(c)(ix), (2), 16, 16(1)

Appeal from: Judicial Review No R2–25–39–02 of 2015 (High Court, Kuala Lumpur).

Ragunath Kesavan (Jadadish Chandra, N Sivananthan, R Thayalan, R Sivaraj, M Karuppanan & M Ganesan with him) (Arbain & Co) for the appellants.

Amarjeet Singh a/l Serjit Singh (Suzana bt Atan & Khairul Fazly bin Kamarudin with him) (Senior Federal Counsel, Attorney General's Chambers) for the first and second respondent.

M Edmund (Rita Jeremiah with him) (Vas & Co) for the third respondent.

Gopal Sri Ram (Balbir Singh, Lim Choon Khim & David Yii Hee Kiet with him) (Najiana Wan Balbir) for the fourth respondent.

Vernon Ong JCA: (delivering judgment of the court)

INTRODUCTION

[1] This is an appeal against the decision of the High Court in dismissing the appellants' judicial review application to quash the first and second respondents' decisions, directives and/or orders as contained in the letters dated 5 December 2014, 31 December 2014 and 6 February 2015.

[2] At the hearing of the appeal, learned counsel for the appellants Mr Ragunath Kesavan confined his argument to only one issue. It is this — whether the Registrar of Societies ('the first respondent') had acted beyond his powers under s 16(1) of the Societies Act 1966 ('the Act') in giving directions to the appellants under s 3A of the Act.

[3] The factual matrix of this case has been comprehensively set out in the judgment of the learned judge. The salient facts insofar as this appeal is concerned relates to the correspondences between the appellants and the first respondent.

SALIENT FACTS

[4] By a letter dated 5 December 2014 ('the first letter') addressed to the first appellant in his capacity as the Secretary-General of the Malaysian Indian Congress ('MIC') the first respondent informed that investigations were carried out following complaints from MIC members of irregularities in an election held on 30 November 2013. The first respondent found that there were irregularities and requested MIC's cooperation to carry out re-elections of the affected branches, divisions, central working committee ('CWC') and Vice-Presidents posts within stipulated time frames.

[5] By a letter dated 24 December 2013, the first appellant provided certain clarification to the first letter and requested for a response and the withdrawal of the call for re-elections from the first respondent.

[6] In its reply dated 31 December 2014 ('the second letter'), the first respondent gave notice under s 16(1) of the Act to the effect that the MIC was required to resolve the dispute within the stipulated time frames. The first respondent requested MIC's cooperation to carry out re-elections of the affected branches, divisions, CWC and Vice-Presidents posts within stipulated time frames. The first respondent added that the registration of the MIC would be cancelled in the event of the non-compliance of the aforesaid.

[7] On 2 January 2015, the first appellant wrote to the first respondent asking for an extension of time to settle the disputes.

[8] By a letter dated 6 January 2015 ('the third letter'), the first respondent stated that the second letter is a notice issued under s 16(1) of the Act; at the same time, the first respondent accepted that the first letter is not a s 16(1) notice. At any rate, the first respondent agreed to extend the stipulated time frames for settling the disputes.

[9] On 5 February 2015, the second appellant ('President of the MIC') wrote to the first respondent with proposals for an amicable settlement of the disputes. The President of the MIC proposed to hold fresh elections for all posts in MIC and suggested that the CWC elected and appointed in the 30 November 2013 elections ('the 2013 CWC') would conduct the elections. Accordingly, the first respondent was requested to extend the time frames for

the holding of the fresh elections and to withdraw the s 16(1) notice vide the second letter and first letter.

[10] In its reply dated 6 February 2015 ('the fourth letter'), the first respondent stated that he had received further complaints which were found to be substantiated. Consequently, the first respondent took the position that the entire elections and General Assembly held in 2013 to be null and void. The first respondent then, in exercise of the powers given to him under s 3A of the Act, asked the MIC to take new measures in order to regularise the affairs of the MIC. Among the measures included the holding of re-elections for all posts to be held on a staggered basis from April to July 2015. The first respondent stipulated that the CWC elected in 2009 ('the 2009 CWC') will be the interim CWC until the re-elections are all completed.

[11] By its letter dated 9 February 2015, the President of the MIC informed the first respondent that: (a) the MIC has agreed to hold fresh elections for all posts in the MIC; (b) the President has nominated nine members to the 2009 CWC; (c) the President has appointed the Secretary-General, the treasurer-general and the information officer from amongst the members of the 2009 CWC; and (d) the 2009 CWC will be the interim CWC until the fresh elections are all completed. To that end, the President of the MIC requested the first respondent to reconsider MIC's request for an extension of the time frames for the holding of the fresh elections.

[12] According to a press statement issued by the secretary general of the Barisan Nasional on 18 February 2015 which was countersigned by the President and Deputy President of the MIC, the re-election of the various posts at all levels were to be held on the dates as stipulated by the first respondent. It was also agreed that as stipulated by the first respondent, the 2009 CWC will be the interim CWC.

SUBMISSIONS OF COUNSEL

[13] Learned counsel for the appellants argued that the first respondent exceeded his authority when he gave the directions to the MIC to hold re-elections and for the 2009 CWC to be the interim committee in purported exercise of his powers under s 3A of the Act ('the directions').

[14] Learned counsel argued that since s 16(1) is a specific provision relating to disputes, the first respondent exceeded his authority by relying on s 3A to give the directions. The power of the first respondent under s 16(1) is limited to the cancellation of the registration of the society under s 13. As such, s 16(1) should be interpreted narrowly so as to limit the scope of duty of the first respondent. On the other hand, s 3A is a general provision in the Act which

does not give any power to the first respondent to give the directions. In support of his proposition, learned counsel referred to *Pendaftar Pertubuhan v Datuk Justin Jinggut* [2013] 3 MLJ 16; [2013] 2 CLJ 362, FC and *DP Vijandran v Majlis Peguam* [1995] 3 MLJ 576; [1996] 1 CLJ 23, (CA).

[15] For the first and second respondents, learned senior federal counsel submitted that first respondent has the necessary powers to issue lawful and binding directions to the MIC to give effect to the settlement of the disputes pursuant to the use of his residual powers under s 3A of the Act. The first respondent was giving effect to the 'institution of proceedings for the settlement of such dispute' in s 16(1) by the use of such powers. In considering the President's request, the first respondent had modified the proposals so as to address the disputes that had arisen. As such, the first respondent had taken into account relevant considerations in making the directions. This was pursuant to his powers that the settlement must be to his satisfaction provided under s 16(2) of the Act and the residual powers under s 3A to issue directions for the purpose of carrying out the elections.

[16] For the fourth respondent, learned counsel submitted that s 3A is not a general provision. Section 3A is a charging provision; it supplements by giving additional powers to the first respondent to be used to carry out the provisions of the Act. At any rate, learned counsel also argued that the case is a non-starter because of the press statement of 18 February 2015 issued after the first respondent's second letter. The press statement containing the terms was signed by the President and Vice-President of the MIC. It referred to the agreement to accept the 2009 CWC on terms which were identical to the first respondent's fourth letter.

DECISION OF THE COURT OF APPEAL

[17] The only issue before the court relates to the question of whether the first respondent has acted beyond his powers under s 16(1) by giving directions under s 3A of the Act.

[18] Section 16 of the Act relates to the powers of the first respondent in the event of a dispute among members of a society. It reads as follows:

> Disputes
>
> 16 (1) If the Registrar is of the opinion that a dispute has occurred among the members or office-bearers of a registered society as a result of which the Registrar is not satisfied of the identity of the persons who have been properly constituted as office-bearers of the society, the Registrar may serve notice on the society requiring the society, within one month of the service of such notice, to produce to him evidence of the settlement of any such dispute and of the proper appointment of the

lawful office-bearers of the society or of the institution of proceedings for the settlement of such dispute.

(2) If any such notice as is provided in subsection (1) is not complied with to the satisfaction of the Registrar within the period of one month or any extension thereof allowed by the Registrar, the Registrar may take steps to cancel the registration of the society under section 13.

[19] Section 3A of the Act relates to the powers of the first respondent and provides as follows:

Powers of Registrar

3A *In addition to* the powers, duties and functions conferred on the Registrar by this Act and any regulations made thereunder, the Registrar shall have and may exercise all such powers, discharge all such duties and perform all such functions as may be necessary for the purpose of giving effect to and carrying out the provisions of this Act. (Emphasis added.)

[20] The appellants' argument was predicated on the ground that as s 16 of the Act is a specific provision relating to disputes it overrides s 3A which is a general provision. As such, the first respondent cannot avail itself of the general powers under s 3A to give the directions to the MIC. The only power reposed in the first respondent under s 16 of the Act is to give notice requiring the MIC to furnish evidence of settlement of the dispute failing which the first respondent may take steps to deregister the MIC under s 13 of the Act.

[21] The maxim *generalibus specialia derogant* is a legal principle which implies that the special provision is one that derogates from the general provision and the special provision must be interpreted strictly in the case; and that a general provision cannot remove a special provision. It is a basic principle of statutory interpretation. It was referred to in *Public Prosecutor v Chew Siew Luan* [1982] 2 MLJ 119 (FC), wherein Raja Azlan Shah CJ (Malaya) (as HRH then was) said:

... *Generalibus specialia derogant* is a cardinal principle of interpretation. It means that where a special provision is made in a special statute, that special provision excludes the operation of a general provision in the general law. (See also *Public Prosecutor v Chua Boew Hin*). The provisions of s 3 of the Criminal Procedure Code which counsel for the respondent seeks to rely on has no relevance whatsoever to the matter before us.

[22] In *Chew Siew Luan*, a woman who was pregnant was charged with trafficking in heroin, an offence under the Dangerous Drugs Act 1952, which carried a punishment of death or an imprisonment for life. She was granted bail by the sessions court pending the hearing of the case pursuant to s 388(1) of the Criminal Procedure Code. An appeal by the public prosecutor against the order

granting bail was dismissed by the High Court who held that s 41B(1) and (2) of the Dangerous Drugs Act, 1952 (DDA), does not override the proviso to s 388(1) of the Criminal Procedure Code. Section 41B(1) of the DDA provides, inter alia, that bail shall not be granted to an accused person charged with an offence under that Act where the offence is punishable with death or with imprisonment for more than five years. The Criminal Procedure Code is an enactment regulating criminal proceedings in general; s 388(1) provides, inter alia, that any person under the age of 16 years or any woman or any sick or infirm person accused of a non-bailable offence punishable with death or imprisonment for life may be released on bail. The Federal Court held that the DDA being in substance a special law passed by parliament in derogation of the rights of a person concerning the granting of bail in an otherwise ordinary case; and in particular s 41B of the DDA is an entirely new section which became operative on 10 March 1978 after the Criminal Procedure Code was amended and extended throughout Malaysia on 10 January 1976. The Federal Court held that the provisions relating to the granting of bail under the DDA must be construed in the context of that Act and not in that of the Criminal Procedure Code and to that extent the general provisions of the Criminal Procedure Code must ex necessitate yield to the specific provisions of s 41B of the DDA in that regard. Accordingly, the Federal Court held that s 388 of the Criminal Procedure Code does not override the provision of s 41B of the DDA.

[23] In *Pendaftar Pertubuhan v Datuk Justine Jinggut* the Registrar of Societies ('ROS') issued a s 16(1) notice stating that he was of the opinion that a dispute had occurred among the office bearers of SNAP ('a political party'), as a result of which he was not satisfied as to the identities of the office bearers of SNAP. The ROS subsequently issued another notice under s 13(2) of the Act, where a notification on his proposal to deregister SNAP was given unless SNAP could furnish reasons within a month why it should not be de-registered. As the party failed to settle its crisis, the ROS issued his decision to cancel the registration of SNAP under s 13(1)(c)(ix) of the Act. An application to, inter alia quash the decision of the ROS in cancelling the registration of SNAP was dismissed by the High Court. On appeal, the Court of Appeal set aside the decision of the High Court. The ROS' appeal to the Federal Court was allowed and the order of the Court of Appeal was set aside and the order of the High Court restored. Abdull Hamid Embong FCJ speaking for the Federal Court said that s 16(1) of the Act has to be given a narrow interpretation limiting the scope of the duty of the ROS to that of only giving an opinion to the existence of a dispute and directing that society to settle the dispute by serving a notice to it. In the event of a non-compliance of that notice, the ROS may deregister that society under s 13(1)(c)(ix) of the Act.

[24] In *DP Vijandran v Majlis Peguam* [1995] 3 MLJ 576; [1996] 1 CLJ 23 (CA), the appellant, an advocate and solicitor, was convicted of an offence

under s 193 of the Penal Code on 6 May 1994. The appellant appealed against the conviction and a stay of execution of the sentence was ordered pending appeal. Meanwhile, the appellant applied to the Bar Council for his Sijil Annual to enable him to practise for the year 1995. The Bar Council argued that since the appellant had been convicted the appellant had suffered an 'order of committal' within the meaning of s 33(1)(h) of the Legal Profession Act 1976 ('LPA'), and so, acting under s 33(2) of the LPA, they refused to issue the Sijil Annual. The Bar Council also argued that it has a wider or residual power for refusing to issue the Sijil Annual generally under s 57(c) of the LPA. The appellant's application to the High Court for an order to direct the Bar Council to issue him the Sijil Annual was refused. On appeal, the Court of Appeal considered two primary issues. Firstly, the Court of Appeal held that the expression 'order of committal' and 'writ of attachment' in s 33(1)(h) of the LPA must associate with the law of contempt; the said expressions must not be widely construed so as to include a conviction as it cuts across well-settled principles of construction and does violence to the language used by Parliament. Secondly, the Court of Appeal rejected the Bar Council's argument that it has a wider power to refuse to issue the Sijil Annual generally under s 57(c) of the LPA. Section 57(c) is most general in nature. Read in its widest context the section only empowers the Bar Council to take cognisance of, inter alia, anything affecting the professional conduct of its members and to take any action it considers fit in relation thereto. Against this are the specific provisions of ss 32, 33 and 34 which deals with the particular subject of issuing Sijil Annual. Applying the maxim *generalibus specialia derogant* the provisions of these latter sections must prevail.

[25] In the case before us, we hold that s 3A of the Act is not a general provision. Section 3A is a charging section in that it gives additional powers to the first respondent for the purposes of giving effect to and carrying out the provisions of the Act. We say this because the opening words of s 3A 'In addition to the powers, duties and functions conferred on the Registrar by this Act …' clearly construed must be interpreted to mean that the powers conferred under s 3A are in addition to that under s 16 of the Act.

[26] *DP Vijindran* is distinguishable because ss 56 and 57 of the LPA relates to the general powers of the Bar Council to manage and administer its affairs. Apart from these general powers, the Bar Council is vested with limited powers to licence members of the legal profession, subject to fulfilment of certain requirements. The licensing power is specifically set out under ss 32, 33 and 34 of the LPA. The opening words of s 57 reads as follows:

57 *Without prejudice* to the general powers conferred by section 56 or the *specific powers to make rules* conferred by any other provisions of this Act the Bar Council shall have power – ... (Emphasis added.)

[27] There are two observations of significance. First, the opening words 'without prejudice to' relate to the general powers of the Bar Council in the context of s 56. In other words, the specific powers set out in s 57 are limited to the scope of the general powers and acts of the Bar Council under s 56. Secondly, s 57 also relates to the specific powers of the Bar Council to make rules under the LPA. There is no nexus between s 57 and the licencing powers of the Bar Council; which powers are found in Part III of the LPA comprising ss 29, 30, 31, 32, 33, 34 . Clearly, s 57(c) have no bearing on the Bar Council's licencing powers under the LPA.

[28] In *Justine Jinggut*, the respondent argued that the ROS was duty-bound to inquire into the validity of the meetings leading to the dispute in order to form an opinion whether any dispute really existed under ss 3A, 7 and 13 of the Act. The question of whether the ROS exceeded his powers under s 16 of the Act by giving directions under s 3A was not considered in that case. As such, *Justine Jinggut* is distinguishable and is not relevant to the present appeal.

[29] In *Chew Siew Luan* , we also note that the overriding force of s 41B(1) is clearly underscored by sub-s 41B(2) of the DDA which expressly stipulates that the provision of sub-s 41B(1) shall have effect notwithstanding any other written law (which includes s 388 of the Criminal Procedure Code) or any rule of law to the contrary.

[30] We now return to the construction of s 3A in the present case. As s 3A does not contain any express qualification (as in s 57 of the LPA) or overriding provision (as in s 41B(2) of the DDA), we hold the s 3A is a provision that clearly confers additional powers on the first respondent exercisable for the purposes of the Act. It is therefore permissible for the first respondent to exercise such powers for the purposes of the Act as conferred under s 3A. On the uncontroverted facts of this case, we find that the first respondent had not acted beyond or in excess of his powers under s 16 of the Act by giving directions under s 3A.

[31] For the foregoing reasons, the question (see para 2 above) was answered in the negative. The appeal was accordingly dismissed with costs of RM30,000 to be paid to the first and second respondents; RM30,000 to be paid to the third and fourth respondents.

Appeal dismissed with costs of RM30,000.

Reported by Afiq Mohamad Noor